IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-01-2005

CORAM:

THE HON'BLE MR.JUSTICE V.KANAGARAJ

AND

THE HON'BLE MR.JUSTICE S.SARDAR ZACKRIA HUSSAIN

Writ Appeal NO. 626 of 1999
and
Writ Petition Nos.2530 and 2531 of 1992

W.A.No.626 of 1999:-

1.The Management of Tamil Nadu
Civil Supplies Corporation Ltd.,
represented by its Chairman and
Managing Director,
42, Thambusamy Road,
Kilpauk, Madras-10.

2.Regional Manager,
Tamil Nadu Civil Supplies
Corporation Limited,
Salem Main Road,
Dharmapuri. ... Appellants

Vs.

1.M.Ramachandran
2.B.M.Shanmugaraj
3.L.Rajendran ... Respondents

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W.P.No.2530 of 1992:-

D.Pusparaj ... petitioner

Vs.

1.The Regional Manager,
Tamil Nadu Civil Supplies
Corporation Limited,
Dharmapuri Region,
Dharmapuri-5.

2.The Chairman-cum-Managing
Director,
Tamil Nadu Civil Supplies
Corporation Ltd.,
Thambusamy Road,
Kilpauk,
Madras-600 010.

3.M.Ramachandran.

4.L.Rajendran. ... Respondents

W.P.No.2531 of 1992:-

K.Lakshmana Rao. ... petitioner

Vs.

1.The Regional Manager,
Tamil Nadu Civil Supplies
Corporation Limited,
Dharmapuri Region,
Dharmapuri-5.

2.The Chairman-cum-Managing
Director,
Tamil Nadu Civil Supplies
Corporation Ltd.,
Thambusamy Road,
Kilpauk,

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Madras-600 010.

3.M.Ramachandran.

4.L.Rajendran. ... Respondents

The Writ appeal has been filed under Clause 15 of Letters Patent against the order dated 6.1.1999 and made in W.P.No.16196 of 1991.

The writ petitions have been filed under Article 226 of the Constitution of India to call for records and connected papers from the 1st respondent pertaining to his impugned proceedings in Roc.No.E1/14615/91 dated 20.1.1992 by issue of a Writ of Certiorarified Mandamus and to quash the said order of the 1st respondent and to direct the respondents 1 and 2 to promote the petitioners as Junior Assistants with effect from 23.12.1991.

W.A.No.626 of 1999:-

For Appellants : Mrs.V.J.Latha

For Respondents : Mr.V.Prakash

W.P.Nos.2530 and 2531 of 1992:-

For petitioners : Mr.K.M.Ramesh

For Respondents 1 & 2 : Mrs.V.J.Latha

For Respondents 3 & 4 : Mr.V.Prakash

COMMON JUDGMENT

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S.SARDAR ZACKRIA HUSSAIN,J.

W.A.No.626 of 1999:- The appellants in W.A.No.626 of 1999 are the respondents 1 and 2 in the Writ Petition No.16196 of 1991. The writ appeal has been filed to set aside the order dated 6.1.1999 made in W.P.No.16196 of 1991 by the learned single Judge.

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2. The Writ Petition No.16196 of 1991 was filed by the respondents 1 to 3 herein to quash the Circular of the appellants Corporation dated 7.2.1991, on the basis of a resolution of the Board dated 25.1.1991 waiving the conditions of passing of the tests, namely:-

(i) a test in District Office Manual and

(ii) Commercial Book-keeping test

for enabling promotion to the feeder category of the staff as Junior Assistants.

3. Considering the rival submissions, the learned single Judge ordered the Writ Petition holding that the impugned Circular can be given effect to prospectively without affecting the rights of any other employees, who have already been promoted as per the rules in force with effect from 27.6.1990 and further holding that there cannot be any bar for waiving the above test qualifications with regard to the other Bill Clerks and Helpers while promoting them after 7.2.1991. The order is challenged in this Writ Appeal.

4. W.P.Nos.2530 and 2531 of 1992:- In both the writ petitions, it is stated that the petitioner D.Pusparaj in W.P.No.2530 of 1992 joined as a Bill Clerk on 6.6.1981 in the Tamil Nadu Civil Supplies Corporation Ltd., and the petitioner K.Lakshmana Rao in W.P.No.2531 of 1992 joined as a Bill Clerk on 27.5.1981. As per the provisional seniority list published by the Corporation as on 1.4.1987 for Bill Clerks, the petitioner D.Pusparaj was shown as item No.79 and the petitioner K.Lakshmana Rao was shown as item No.73 and after such publishing seniority list, the Corporation introduced new Service Rules with effect from 27.6.1990 and as per which new qualification has been introduced as set out above in the Writ Petition No.16196 of 1999, subject matter of the Writ Appeal. Pursuant to the said Rules, the three petitioners in W.P.No.16196 of 1991, subject matter of the Writ Appeal viz., M.Ramachandran, B.M.Shanmugaraj and L.Rajendran were promoted as Junior Assistants though they were juniors to the writ petitioners in W.P.Nos.2530 and 2531 of 1992. Subsequently, the Corporation reverted the said three persons on 10.1.1991 to the post of Bill Clerks. In the

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Meeting of the Board of the Corporation, as per the resolution No.9 dated 25.1.1991, the condition that Bill Clerks should have passed in District Office Manual test and Commercial Book-keeping test for promotion as Junior Assistant has been relaxed and further stating that such tests have to be passed during the period of probation as Junior Assistant. Accordingly, the Circular dated 7.2.1991, subject matter of the writ petition in the writ appeal, was issued, on the basis of the resolution of the Board dated 25.1.1991. The respondents 3 and 4 in both the writ petitions, who are respondents 1 and 3 in the writ appeal, pursuant to such Circular were reverted as Bill Clerks as per order dated 10.1.1991 and the order was challenged in Writ Petition Nos.852 and 896 of 1991 in which the order of reversion in respect of the respondents 3 and 4 in both the writ petitions were quashed, which was confirmed in Writ Appeal Nos.1090 and 1091 of 1991. Thereafter, the orders of reversion of the said respondents 3 and 4 in the writ petitions were cancelled and were reposted to the post of Junior Assistants from 16.9.1991. Then, the notice dated 17.9.1991 was issued by the Chairman of Corporation to the respondents 3 and 4 to show-cause against the reversion for want of vacancy and also reverted them once again to the post of Bill Clerks on 25.9.1991. The respondents 3 and 4 in both the writ petitions along with second respondent in the writ appeal challenged the reversion in the writ petition subject matter of the writ appeal and obtained an order of interim stay and once again pursuant to such order, they were posted as Junior Assistants from 20.1.1992.

5. The petitioner in W.P.No.2530 of 1992 was promoted on 23.12.1991 and the petitioner in W.P.No.2531 of 1992 was promoted on 10.1.1991 respectively as Junior Assistants. Both of them are not considered for promotion as early as on 30.12.1990 and their seniority were overlooked by promoting juniors as they possessed qualifications in District Office Manual and Commercial Book-keeping Tests. The introduction of the new qualification with effect from 24.6.1990 (actually given effect to on 30.12.1990) made the Juniors to be promoted as Junior Assistants. By virtue of seniority and by virtue of relaxation in the earlier fixed qualifications, both the writ petitioners became eligible

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for the post of Junior Assistant on 23.12.1991 and accordingly they were promoted. But as per proceedings dated 20.1.1992 both the writ petitioners have been reverted from the post of Junior Assistants to the post of Bill Clerks and the said order is challenged in both the Writ Petitions.

6. In the counter filed by the Tamil Nadu Civil Supplies Corporation, both the Writ Petitions are opposed that as per the revised Service Regulations of the Corporation which came into effect on 27.6.1990, the Bill Clerks should have passed the minimum general educational qualification besides passing the Departmental Tests in District Office Manual Test and Commercial Book-keeping test for promotion to the cadre of Junior Assistant and since both the writ petitioners have not passed the tests till 31.12.1990, they were not considered for promotion as Junior Assistants as per service rules in force at that time. As per the new Service Rules in force three Bill Clerks, viz., the respondents 1 to 3 in the writ appeal, who possessed the requisite qualifications in Dharmapuri District for promotion as Junior Assistant were got promoted, though they were juniors to the writ petitioners herein. Since the rules were relaxed for those who did not pass the departmental tests, all the three of them were reverted as per proceedings dated 10.1.1991 which were challenged in the Writ Petition Nos.1090 and 1091 of 1991 and as per the interim order dated 6.9.1991 obtained in the said Writ Petitions, they were re-promoted as Junior Assistants as per proceedings dated 16.9.1991, but again reverted with effect from 25.9.1991 as Bill Clerks for want of vacancy. However, again they were promoted since they obtained interim stay by filing writ petition, subject matter of writ appeal as per proceedings dated 20.1.1992 and to accommodate the said three persons, viz., respondents 1 to 3 in the writ appeal, the writ petitioners herein have been reverted as Bill Clerks. Further, it is stated in the counter that the promotion of both the writ petitioners with effect from 23.12.1991 was subject to the conditions that it was purely on temporary basis, that the temporary promotion does not confer on them to make any rights to have preferential claim in respect of the promotion, that they cannot claim any seniority on the

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basis of such temporary promotion and that they will be reverted as Bill Clerks without prior notice and without assigning any reason. Accepting the said conditions, the writ petitioners herein joined as Junior Assistants on temporary promotion. The frequent promotions and reversions were only due to change of policy decisions of the Corporation and as per the directions of this Court.

7. As per order of the Hon'ble the Chief Justice, the Writ Petitions are taken up along with Writ Appeal and are disposed by this common judgment.

8. The respondents 1 to 3 in the Writ Appeal and the petitioners in both the writ petitions joined as Bill Clerks in Tamil Nadu Civil Supplies Corporation. The writ petitioner D.Pusparaj joined as Bill Clerk on 06.6.1981 and the writ petitioner K.Lakshmana Rao joined as Bill Clerk on 27.5.1981. As per the provisional seniority list published by the Corporation as on 01.4.1987 for Bill Clerks, the petitioner D.Pusparaj was shown as item No.79 and the petitioner K.Lakshmana Rao was shown as item No.73. The respondents 1 to 3 in the Writ Appeal, who filed W.P.No.16196 of 1991, joined in service as Bill Clerks in the years 1981 and 1985, viz., the first respondent in the Writ Appeal M.Ramachandran joined in service in 1981 and his seniority as per the list is shown as item No.85 while the second respondent B.M.Shanmugaraj and the third respondent L.Rajendran joined in service in the year 1985 and their seniority in the list are shown as item Nos.171 and 172 respectively and as such, as per the seniority list, the writ petitioners are seniors to the respondents 1 to 3 in the writ appeal. Since the Corporation introduced new Service Rules with effect from 27.6.1990 and as per which new qualification has been introduced, namely, (1) passing of test in District office Manual and (2) passing of Commercial Book-keeping test, the three petitioners in W.P.No.16196 of 1991, subject matter of the writ appeal and who are respondents 1 to 3 in the above writ appeal, were promoted as Junior Assistants though they were juniors to petitioners in W.P.Nos.2530 and 2531 of 1992. However, they were reverted by the Corporation on 10.01.1991 to the post of Bill Clerks. The Corporation, on the basis of the Resolution passed by the Board on 25.01.1991, issued a

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Circular dated 07.02.1991 waiving the conditions for passing of the tests. The orders of reversion of the respondents 1 to 3 in the above Writ Appeal were quashed finally in W.A.Nos.1090 and 1091 of 1991 confirming the order in W.P.Nos.852 and 896 of 1991 respectively by order dated 12.8.1991. Thereafter, the orders of reversion of the said respondents were cancelled and were reposted to the post of Junior Assistants from 16.9.1991. Once again they were reverted for want of vacancy and pursuant to the order of interim stay obtained by the petitioners 1 to 3 in the Writ Petition No.16196 of 1991, subject matter of the Writ Appeal, they were again posted as Junior Assistants on 20.01.1992, which is challenged by both the petitioners in W.P.Nos.2530 and 2531 of 1992.

9. Therefore, the crux of the matter in the writ appeal and the writ petitions are the new Service Rules introduced by the Corporation with effect from 27.6.1990 and the Circular issued by the Corporation dated 07.02.1991. As per the new Service Rules introduced with effect from 27.6.1990, the conditions for enabling the promotion to the Feeder category of the staff as Junior Assistants are:

(1) passing a test in District Office Manual; and

(2) passing a test in Commercial Book-keeping.

Pursuant to the abovesaid new Service Rules introduced by the Corporation and in view of the fact that the respondents 1 to 3 in the appeal have satisfied the said conditions, they were promoted as Junior Assistants as per the proceedings of the Corporation dated 31.12.1990 though they were Juniors to the petitioners in W.P.Nos.2530 and 2531 of 1992.

10. The Corporation issued Circular dated 07.02.1991 waiving the conditions of passing the above said tests. Though as per the Circular the conditions were waived, it was made compulsory for the persons promoted as Junior Assistants to pass both the tests during the period of probation.

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11. The learned counsel appearing for the appellants and the learned counsel appearing for the writ petitioners in both the writ petitions argued that inasmuch as the Circular dated 07.02.1991 was issued waiving the conditions of passing the abovesaid tests for promotion for the post of Junior Assistants, promoting the respondents 1 to 3 in the Writ Appeal, who are juniors to both the writ petitioners, as Junior Assistants after reverting both the petitioners in the writ petitions as per the impugned proceedings, is improper. The learned counsel for both the writ petitioners submitted that retrospective effect was not given in the Circular and the impugned circular was only given effect to prospectively as ordered by the learned single Judge in the writ petition, subject matter of the writ appeal.

12. The learned counsel for the respondents 1 to 3 in the writ appeal and for the respondents 3 and 4 in both the writ petitions argued that inasmuch as the respondents 1 to 3 in the writ appeal were promoted pursuant to the new Service Rules introduced with effect from 27.6.1990 and since they were qualified as per the said Rules having passed the required tests, their promotions as Junior Assistants cannot be said to be improper though they were Juniors to both the writ petitioners. The learned counsel also submitted that pursuant to the various orders referred to above, the respondents 1 to 3 in the appeal were again promoted as per the said proceedings and they are functioning as Junior Assistants. In that view, the said proceedings promoting the respondents 1 to 3 in the writ appeal as Junior Assistants need not be quashed.

13. As rightly argued by the learned counsel for the respondents 1 to 3 in the appeal, the qualification, namely, passing of the tests prescribed in the new Service Rules, which came into effect on 27.6.1990, was waived by the Circular dated 07.02.1991 so as to facilitate the Bill Clerks and Helpers, who have not passed the tests, to avail the promotion opportunity. As per the Circular dated 07.02.1991, the qualification introduced as per the new Service Rules has not been fully waived, but the persons promoted as Junior Assistants after the said Circular are required to qualify the tests within the period of

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probation. If the respondents 1 to 3 in the writ appeal, who were promoted pursuant to the new Service Rules introduced with effect from 27.6.1990, have to be reverted on the basis of the Circular dated 07.02.1991, then the said benefits conferred to them by the new Service Rules will be affected. Therefore, the promotion on the basis of the seniority can be claimed only after the issuance of the said Circular dated 07.02.1991 and the Circular will not affect the rights of the respondents 1 to 3 in the writ appeal, who have already been promoted as Junior Assistants and who are juniors to both the writ petitioners, in view of the fact that the said Circular is only given effect to prospectively and not with retrospective effect. It follows that no ground is made out by the petitioners in both the writ petitions to quash the impugned order dated 20.01.1992, as per which pursuant to the order of this Court referred to above, the respondents 1 to 3 in the writ appeal were promoted by reverting both the petitioners in the writ petitions. Since the order was passed in the writ petition, subject matter of the writ appeal, holding that the new Service Rules can be given effect to prospectively without affecting the rights of the employees, who have already been promoted as per the Rules with effect from 27.6.1990, and that there can be no bar for waiving the test qualifications with regard to the Bill Clerks and Helpers while promoting them after 1991, the writ petition, subject matter of the writ appeal, has been disposed of with the above observations. The appellants have not made out a case to reverse or modify the same.

14. In the light of the discussion made above, W.A.No.626 of 1999 and W.P.Nos.2530 and 2531 of 1992 are dismissed. No costs.

ts/gri

Sd/
Asst.Registrar

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Sub Asst.Registrar

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TO

1. THE CHAIRMAN CUM
MANAGING DIRECTOR
TAMIL NADU CIVIL SUPPLIES CORPORATION LTD.
42, THAMBUSAMY ROAD,
KILPAUK, MADRAS-10

2. THE REGIONAL MANAGER
TAMIL NADU CIVIL SUPPLIES
CORPORATION LTD.
DHARMAPURI REGION,
DHARMAPURI - 5.

+ 1 CC to Mr. V. Prakash, Advocate SR 532

+ 3 Ccs to Mrs. V.J. Latha, Advocate SR 393

Judgment in

W.A.NO. 626 OF 1999
and
W.P.NOS. 2530 AND 2531 OF 1992

03-01-2005

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